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FILED
 Superior Court of California
 County of Los Angeles

12/03/2021

Sherri R. Carter, Executive Officer / Clerk of Court

By: M. Miro Deputy

5 Attorneys for Plaintiff Ulysses A. Rivas
 and the Proposed Class
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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 8 **FOR LOS ANGELES**

9 ULYSSES A. RIVAS, individually and on
 10 behalf of all others similarly situated,

11 Plaintiff,

12 v.

13 CITY OF MANHATTAN BEACH, a Public
 Corporation, and DOES 1 through 10,
 inclusive,

14 Defendants.
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Case No. 21STCV38784

CLASS ACTION

FIRST AMENDED COMPLAINT FOR DAMAGES

1. **Civil Penalties under the Private Attorneys General Act** (Cal. Labor Code §2698, *et. seq.*)

DEMAND FOR JURY TRIAL

Complaint Filed: October 20, 2021

Trial Date: None

20 Plaintiff ULYSSES A. RIVAS hereby amends his Complaint as follows:

21 **INTRODUCTION**

22 1. Plaintiff ULYSSES A. RIVAS is, and at all times herein mentioned was, an individual
 23 residing in the State of California, County of Los Angeles and employed by defendant City of
 24 Manhattan Beach as described herein.

25 2. Defendant City of Manhattan Beach is and at all times herein mentioned was an
 26 incorporated city in the County of Los Angeles.

27 3. Plaintiff is ignorant of the true names and capacities of defendants sued herein as
 28 Does 1 through 10, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff

1 may seek leave of the court to amend the complaint to allege the true names and capacities of such
2 defendants when same is ascertained.

3 4. At all times herein mentioned each of the defendants was the employee of each of the
4 remaining defendants, and in doing the things herein before and hearing after alleged, were acting in
5 the course and scope of such agency.

6 5. This class action challenges the failure of Defendant City of Manhattan Beach
7 (“City”) to provide rest and meal periods and related non-payment of wages.

8 6. On August 16, 2021, Plaintiff sent a letter to the California Labor & Workforce
9 Development Agency (“LWDA”) pursuant to *Labor Code* §2699.3 regarding allegations of
10 violations of the *Labor Code* as stated herein. A copy of that letter is attached hereto and incorporated
11 herein as Exhibit 1. The LWDA did not respond to this letter, but Defendant City did.

12 7. On October 6, 2001, in response to Defendant City’s letter, Plaintiff sent an amended
13 letter to LWDA pursuant to *Labor Code* §2699.3 deleting certain allegations of Labor Code
14 violations. A copy of that letter is attached hereto and incorporated herein as Exhibit 2. Neither the
15 LWDA nor Defendant City responded to this letter.

16 8. Plaintiff is informed and believes and thereon alleges that Defendants, engaged in,
17 among other things, a system of willful violation of the California *Labor Code* and PAGA, by
18 creating and maintaining policies, practices and customs that knowingly denied employees their civil
19 and statutory rights to full rest periods and meal breaks. The policies, practices and customs of
20 Defendants as alleged herein have resulted in unjust enrichment of Defendants, economic harm to
21 Plaintiff and Class Members.

22 9. Plaintiff alleges and believes that the interests of those he seeks to represent will be
23 protected because he has no conflict of interest and because he is seeking the same type of damages.
24 Plaintiff further alleges and believes that those he seeks to represent are in a number sufficient to
25 meet the test of numerosity for class purposes. Moreover, the legal representation of those he seeks
26 to represent is adequate based on his attorney’s professional qualifications, skill, experience, and
27 resources. Counsel may advance the costs which are not considered to be massive. It is believed that
28 a suitable number of those employees Plaintiff seeks to represent are presently employed by the

1 Defendant and their identities are readily ascertainable. So too are the identities of past
2 employees as the City was and is required to maintain records of payments to this group based on
3 sections of the *Labor Code*, good business practices, and other federal and state laws and regulations.

4 10. Plaintiff further alleges and believes that there are shared common facts and law in
5 his case with the claims of those he seeks to represent as each past and present employee was
6 deprived of rest periods and meal breaks, with resulting unpaid overtime wages.

7 11. Plaintiff is informed and believes that the City on several occasions that it was in
8 violation of wage and hour laws. Moreover, Plaintiff is informed and believes, and thereon alleges,
9 that Defendants, and each of them, were the agents, managers, directors, or employees of the other
10 Defendants, or that was acting within the course and scope of such agency or employment, at all
11 times relevant herein. Alternatively, it is alleged that Defendants, and each of them, exceeded the
12 scope of their agency and engaged in unlawful conduct for which they are personally and individually
13 liable.

14 12. Plaintiff is informed and believes, and on that basis alleges, that at all times herein
15 mentioned each of the Defendants was an agent, servant, employee, and/or joint venturer of each of
16 the remaining Defendants, and were at all times acting within the course and scope of such
17 agency, service, employment, and/or joint venture, and each of the Defendants have ratified,
18 approved, and authorized the acts of each of the remaining Defendants with full knowledge of said
19 facts. Alternatively, it is alleged that Defendants, and each of them, exceeded the scope of their
20 agency, servitude, employment, and/or joint venture and engaged in unlawful conduct for which
21 they may be personally and individually liable

22 **JURISDICTION AND VENUE**

23 13. The remedies sought by Plaintiff exceed the minimal jurisdiction limits of the
24 Superior Court and will be established according to proof at trial. Based upon information,
25 investigation and analysis as of the filing date of this complaint, Plaintiff alleges that the amount in
26 controversy for Plaintiff, including claims for reimbursable and necessary business-related expenses,
27 civil and statutory penalties, injunctive relief, and a pro rata share of attorneys' fees, exceeds seventy-
28 five thousand dollars (\$75,000), and that the aggregate amount in controversy for the proposed class

1 action, including monetary damages, restitution, penalties, injunctive relief, and attorneys' fees,
2 exceeds one million dollars, exclusive of interest and costs. Plaintiff reserves the right to amend the
3 amount sought based upon new and different information resulting from investigation and discovery.

4 14. This Court has jurisdiction over this action and the City because all Defendants work
5 and/or reside in Los Angeles County. Also, pursuant to the California IWC Wage Order No. 9 and
6 upon information and belief, the City is specifically exempt from immunity.

7 15. Venue is proper in this Court because Defendants employed persons and contracted
8 with agents, including Plaintiff and other class members, in the County of Los Angeles and thus a
9 substantial portion of the transactions and occurrences related to this action occurred in this county.

10 16. California Labor Code §§2698 et seq., the *Labor Code* Private Attorneys General Act
11 (“PAGA”) authorizes aggrieved employees to sue directly for various civil penalties under the
12 California Labor Code.

13 17. Plaintiff is informed and believes and herein alleges that, as of November 19, 2021,
14 or sixty-five (65) days after providing amended notice to the LWDA and to Defendants, the
15 violations alleged herein have not been cured or corrected.

16 GENERAL ALLEGATIONS

17 A. Defendants’ Background

18 18. Defendant City is a public entity that provides services to its residents, including bus
19 services to its elderly and/or disabled residents.

20 B. Background of Plaintiff and The Proposed Class

21 19. During the relevant time period, Plaintiff Rivas was commercial driver of the busses
22 for Defendant City with over sixteen years of commercial driver experience as a City Employee.

23 20. The allegations made by Plaintiff on behalf of himself and all other aggrieved current
24 and former employees of the City for the period from 2018 to the present are set forth below.

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FIRST CAUSE OF ACTION

Civil Penalties under the Private Attorneys General Act

(Labor Code §2699, et seq.)

(Against All Defendants)

21. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

22. In or about 2005, Plaintiff was hired by defendant City as a bus driver. Plaintiff and those he seeks to represent, are responsible for inspecting the buses before operation, for picking up and dropping off customers as assigned by the City and perform the tasks necessary to complete the job, and at the conclusion of the job repeat the steps for new pickups and drop offs. Plaintiff is informed and believes, and on that basis alleges, that the nature of his employment is the same position that past and present employees of Defendant have held for the three (3) years prior to and up to the filing of the instant lawsuit. During the course of his employment, Defendant City failed to properly pay and did not pay overtime compensation to Plaintiff and those Plaintiff is seeking to represent by failing and refusing to account for or pay for the time that Plaintiff and those he seeks to represent worked during interrupted rest periods and lunch breaks. The City also failed to keep accurate hours of each driver's work time, including interrupted rest breaks and meal periods. Moreover, Defendant City failed to pay an hour's wage in lieu of each interrupted rest period and/or meal period.

23. Plaintiff seeks on his own behalf, and on behalf of all past and present employees of Defendant recovery of all unpaid overtime compensation and penalties as set forth in *Labor Code* §2699. Plaintiff further seeks to recover on his behalf and on behalf of other past and present employees one hour of wages for each rest period not provided.

PRAYER FOR RELIEF

Plaintiff Rivas, individually and on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For compensatory damages in an amount according to proof, but in any event estimated to be not less than \$1,000,000;

1 2. For penalties, interest, attorneys fees, and costs pursuant to *Labor Code* §§510, 1194,
2 1199, 218.6, and 226.7 on behalf of Plaintiff and on behalf of past and present employees pursuant
3 to *Labor Code* §2699 as allowable by law;

4 3. For prejudgment and post-judgment interest as provided by law;

5 4. For such other and further relief as the Court may deem equitable and appropriate.
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7 Dated: December 3, 2021

BARRERA & ASSOCIATES

8 By: /s/ Patricio Barrera

9 Patricio T.D. Barrera

10 Attorneys for Plaintiff Ulysses A. Rivas and on
11 behalf of all others similarly situated
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EXHIBIT 1

August 16, 2021

VIA UPLOAD TO LWDA WEBSITE

ATTN: PAGA Administrator
PAGAFilings@dir.ca.gov
California Labor & Workforce Development Agency
800 Capitol Mall, Suite 5000
Sacramento, CA 95814

**Re: Labor Code Violations by the City of Manhattan Beach
Seeking California Labor Code § 2699 Penalties**

Re: Employee: Ulysses Rivas

Dear PAGA Administrator:

I have been retained by Ulysses Rivas to represent him against his employer, the City of Manhattan Beach ("City"), for violations of California wage-and-hour laws.

Mr. Rivas intends to seek unpaid overtime and penalties for violations of the California Labor Code, which are recoverable under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), California Labor Code section 2698, *et seq.* Mr. Rivas seeks penalties on behalf of the State of California for himself and other current and former aggrieved employees (hereafter collectively "aggrieved employees"). This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

The City is an incorporated city in the Fourth Supervisorial District of Los Angeles County, with its City Hall located at 1400 Highland Avenue, Manhattan Beach, CA 90266. The City is represented by its City Attorney's Office.

The City has violated and continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 204, 206, 223, 226, 226.7, 232.5, 432.5, 510, 512, 558, 1102.5, 1174, 1194, 1198, and 1199.

FACTUAL BACKGROUND

On or about April 5, 2005, Mr. Rivas began his employment with the City as a part-time employee in the position of "Transportation Services Operator." In this position, Mr. Rivas is responsible for operating a bus and providing transportation services to the City residents through the City's Dial-A-Ride program, providing curb to curb service, among other duties. On or about May 18, 2015, Mr. Rivas became full time. Prior to the COVID 19 shutdown in March

2020, the City had 10 drivers; currently, it has 5 drivers. Since 2017, the City has employed approximately 20 drivers.

Mr. Rivas initially was compensated on an hourly basis of \$16.04 dollars per hour. His hourly rate for the past four years has been or is \$31.78 (2021); \$31.24 (2020); \$30.77 (2019); and \$30.16 (2018).

Mr. Rivas's "regular" working hours are from 7:30 a.m. to 5:30 p.m., Monday through Thursday, and 7:30 a.m. to 4:30 p.m. on Fridays. Some drivers work 6:30 a.m. to 5:30 p.m., or on weekends 8:00 a.m. to 5:00 p.m. Rest breaks are not scheduled (although at one time they were), and lunch is scheduled 12:00 – 1:00 p.m. Work schedules and time sheets are handled through a City program called Routematch. That program turns off for lunch periods.

During work hours, Mr. Rivas must quickly respond if he is contacted by the City Dispatch for a pickup. Many times, work is assigned close to his lunch hour or during a rest period, interrupting those breaks. Because Routematch is shut down for lunch, Mr. Rivas and other drivers cannot record on the program the actual work time worked. Although the City website states that dispatch office hours are closed during the lunch meal period, in fact the City often assigns pickups to Mr. Rivas as well as other drivers near their lunch time. Mr. Rivas' work time as well as that of other drivers spills over into lunch time. Many times, Mr. Rivas works more than an eight-hour day, but is not paid overtime or even straight time for the work time.

Because rest breaks also are not scheduled, the City chooses not to know if a driver had an interrupted break because drivers remain on-call. If there is a ride cancellation, many times the driver is unable to have down time, but he/she is instructed to patrol parks, pick up and deliver boxes and/or meals, wash/clean/sanitize city vehicles.

From his hire date through today, Mr. Rivas has been unable to take uninterrupted rest breaks or meal periods, sometimes even working through his meal period. Nor can Mr. Rivas easily trade job assignments with other employees to give some flexibility to his schedule as they also experience the same issues. Further, Mr. Rivas cannot refuse an assignment during his meal period or rest break. Although Mr. Rivas complained about this situation, the City management expresses anger and dissatisfaction to his complaints. Indeed, Mr. Rivas is a victim of retaliation for his complaints. Because of what they have seen, other drivers do not complain.

More importantly, the City has failed to compensate Mr. Rivas for all of his uninterrupted meal periods and rest breaks.

Mr. Rivas alleges that he is not the only aggrieved employee. Upon information and belief, approximately 20 or more former and current the City employees experienced the same unlawful treatment.

LABOR CODE VIOLATIONS

California Labor Code section 204 requires an employer to pay all wages due and owing semi-monthly. Mr. Rivas and other aggrieved employees labored for the City without receiving

all wages due and owing on a semi-monthly basis. With regard to Mr. Rivas in particular, he worked approximately 900 hours of uncompensated time, including overtime. These wages were not paid to him, semi-monthly or otherwise.

California Labor Code section 206 requires an employer to pay unconditionally all undisputed wages owed to employees within the time period required by law. The City failed to pay Mr. Rivas and other aggrieved employees all undisputed wages owed to them within the time periods required by the Labor Code. With regard to Mr. Rivas in particular, he was deprived of approximately 900 hours of uncompensated time, including overtime. These wages were not paid to him, within the time period required by law or otherwise. The City has no legitimate, good-faith basis for depriving Mr. Rivas of this indisputably owed compensation.

California Labor Code section 223 prohibits an employer from secretly paying an employee less than the wage scale established by statute or contract. Mr. Rivas and other aggrieved employees' pay rate is established by contract. With regard to Mr. Rivas in particular, he worked approximately 900 hours of uncompensated time, including overtime. These wages were not paid to him at any time.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, the City failed to provide Mr. Rivas and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include the total hours worked by Mr. Rivas and other aggrieved employees, deductions, net wages earned, and overtime wages owed.

California Labor Code section 226.7 prohibits an employer from requiring employees to work during a meal or rest period mandated by statute, regulation, standard, or order of the Industrial Welfare Commission. If an employer fails to provide an employee a meal or rest or recovery period, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided. During the relevant time period, Mr. Rivas and other aggrieved employees were routinely forced to miss meal and rest periods, and the City failed to compensate them for doing so.

California Labor Code section 232.5 prohibits an employer from formally disciplining, or otherwise discriminating against an employee who discloses information about the employer's working conditions. the City discharged, formally disciplined, or otherwise discriminated against Mr. Rivas and other aggrieved employees for disclosing information about their working conditions. With regard to Mr. Rivas in particular, the City disciplined, and otherwise discriminated against him for complaining about uninterrupted rest and meal periods, even though compensation was due.

California Labor Code section 432.5 prohibits an employer from requiring an employee to agree in writing to any term or condition of employment known by the employer to be

unlawful. The City required Mr. Rivas and other aggrieved employees to agree and work under conditions or terms of employment known by them to be unlawful.

California Labor Code section 510 requires employers to provide overtime pay to employees whether on a tradition 8-hour day or alternative workweek schedule. The City required Mr. Rivas and other aggrieved employees to work overtime hours by not providing uninterrupted meal periods; they did not receive the proper overtime premiums as required by section 510. With regard to Mr. Rivas in particular, he was deprived of approximately 900 hours of uncompensated time, including overtime. None of those wages have been paid to date.

California Labor Code section 512 prohibits an employer from failing to provide employees with a 30-minute unpaid meal break after 5 hours of work and a second 30-minute unpaid meal break after 10 hours of work, with certain exceptions not applicable herein. That same section requires an employer to provide a 10-minute paid rest break for every four hours worked or major fraction thereof. During the relevant time period, Mr. Rivas and other aggrieved employees were forced to work in excess of these hours without being provided with the breaks required by this statute. With regard to Mr. Rivas in particular, he often worked through meal or rest periods because he had to pick up passengers immediately when instructed.

California Labor Code section 558 prohibits employers from violating orders of the Industrial Welfare Commission and prohibits the underpayment of wages to employees. During the relevant time period, the City violated IWC record keeping requirements and underpaid wages due to Mr. Rivas and other aggrieved employees. With regard to Mr. Rivas in particular, he was deprived of approximately 900 hours of uncompensated time, including overtime. None of those wages have been paid to date.

California Labor Code section 1102.5 prohibits an employer from retaliating against an employee for refusing to participate in an activity that would result in a violation of a state or federal statute, rule, or regulation or for reporting (internally or externally) what they reasonably believe to be unlawful conduct by the employer. During the relevant time period, the City retaliated against Mr. Rivas and other aggrieved employees for refusing to participate in such illegal activities and refusing to be compensated in a manner that violates the Labor Code sections mentioned herein, as well as for complaining internally regarding the illegal activities and unsafe conditions. With regard to Mr. Rivas in particular, he complained that he was unable to take rest and meal periods and was reprimanded.

California Labor Code section 1174(d) requires employers to keep records at their establishment showing the hours worked daily by, and the wages paid to, employees for a period of not less than three years. During the relevant time period, the City failed to maintain records in compliance with this section. The City's noncompliance with California record keeping requirements has injured Mr. Rivas and/or other aggrieved employees. With regard to Mr. Rivas in particular, the City failed to maintain records of his overtime hours worked and the compensation due.

California Labor Code section 1194 prohibits an employer from paying wages that are less than the legally required minimum wage and overtime compensation, regardless of whether

or not the employee agreed to work for a lesser amount. During the relevant time period, the City failed to pay Mr. Rivas and other aggrieved employees the overtime due and owing to them under the law. With regard to Mr. Rivas in particular, he was deprived of approximately 900 hours of uncompensated time, including overtime. None of those wages have been paid to date.

California Labor Code section 1198 requires employers to comply with the hours and working conditions restrictions imposed by the Industrial Welfare Commission Wage Orders. The City failed to comply with the applicable Wage Order restrictions on hours, overtime compensation, meal, and rest breaks, and working conditions with regard to Mr. Rivas and other aggrieved employees. With regard to Mr. Rivas in particular, the City failed to pay overtime compensation that was due and owing to him and also failed to provide him with the meal and rest breaks required by the applicable Wage Order.

California Labor Code section 1199 makes it unlawful for an employer to require or cause an employee to work for longer hours than or under conditions prohibited by an applicable Wage Order. the City required or caused employees, including Mr. Rivas and other aggrieved employees, to work longer hours or under conditions prohibited by the applicable Wage Orders and failed to pay them in accordance with those Wage Orders.

Therefore, on behalf of all current and former aggrieved employees, Mr. Rivas seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

If you have any questions or require any additional information, please do not hesitate to contact us. Thank for your attention to this matter.

Sincerely,

/s/ Patricio Barrera

PATRICIO T.D. BARRERA
Attorney for Ulysses Rivas

cc: **Via U.S. Certified Mail**

Manhattan Beach City Attorney
1400 Highland Avenue
Manhattan Beach, CA 90266

City of Manhattan Beach
Attn: City Clerk's Office
1400 Highland Avenue
Manhattan Beach, CA 90266

EXHIBIT 2

October 6, 2021

VIA UPLOAD TO LWDA WEBSITE

ATTN: PAGA Administrator
PAGAfilings@dir.ca.gov
California Labor & Workforce Development Agency
800 Capitol Mall, Suite 5000
Sacramento, CA 95814

**Re: *Amended Labor Code Violations by the City of Manhattan Beach
Seeking California Labor Code § 2699 Penalties***

Re: *Employee: Ulysses Rivas*

Dear PAGA Administrator:

This letter amends the PAGA claim filed on August 16, 2021 filed on behalf of Ulysses Rivas his employer, the City of Manhattan Beach ("City"), for violations of California wage-and-hour laws.

Mr. Rivas intends to seek unpaid overtime and penalties for violations of the California Labor Code, which are recoverable under PAGA, California Labor Code section 2698, *et seq.* Mr. Rivas seeks penalties on behalf of the State of California for himself and other current and former aggrieved employees (hereafter collectively "aggrieved employees"). This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

The City is an incorporated city in the Fourth Supervisorial District of Los Angeles County, with its City Hall located at 1400 Highland Avenue, Manhattan Beach, CA 90266. The City is represented by its City Attorney's Office.

This letter amends the list of violations which the City has violated and continues to violate, among other provisions of the California Labor Code and applicable IWC Wage Order No. 9, California Labor Code sections 223, 226.7, 232.5, 432.5, 510, 512, 558, 1102.5, 1174, 1194, 1198, and 1199.

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FACTUAL BACKGROUND

On or about April 5, 2005, Mr. Rivas began his employment with the City as a part-time employee in the position of "Transportation Services Operator." In this position, Mr. Rivas is responsible for operating a bus and providing transportation services to the City residents through the City's Dial-A-Ride program, providing curb to curb service, among other duties. On or about May 18, 2015, Mr. Rivas became full time. Prior to the COVID 19 shutdown in March 2020, the City had 10 drivers; currently, it has 5 drivers. Since 2017, the City has employed approximately 20 drivers.

Mr. Rivas initially was compensated on an hourly basis of \$16.04 dollars per hour. His hourly rate for the past four years has been or is \$31.78 (2021); \$31.24 (2020); \$30.77 (2019); and \$30.16 (2018).

Mr. Rivas's "regular" working hours are from 7:30 a.m. to 5:30 p.m., Monday through Thursday, and 7:30 a.m. to 4:30 p.m. on Fridays. Some drivers work 6:30 a.m. to 5:30 p.m., or on weekends 8:00 a.m. to 5:00 p.m. Rest breaks are not scheduled (although at one time they were), and lunch is scheduled 12:00 – 1:00 p.m. Work schedules and time sheets are handled through a City program called Routematch. That program turns off for lunch periods.

During work hours, Mr. Rivas must quickly respond if he is contacted by the City Dispatch for a pickup. Many times, work is assigned close to his lunch hour or during a rest period, interrupting those breaks. Because Routematch is shut down for lunch, Mr. Rivas and other drivers cannot record on the program the actual work time worked. Although the City website states that dispatch office hours are closed during the lunch meal period, in fact the City often assigns pickups to Mr. Rivas as well as other drivers near their lunch time. Mr. Rivas' work time as well as that of other drivers spills over into lunch time. Many times, Mr. Rivas works more than an eight-hour day, but is not paid overtime or even straight time for the work time.

Because rest breaks also are not scheduled, the City chooses not to know if a driver had an interrupted break because drivers remain on-call. If there is a ride cancellation, many times the driver is unable to have down time, but he/she is instructed to patrol parks, pick up and deliver boxes and/or meals, wash/clean/sanitize city vehicles.

From his hire date through today, Mr. Rivas has been unable to take uninterrupted rest breaks or meal periods, sometimes even working through his meal period. Nor can Mr. Rivas easily trade job assignments with other employees to give some flexibility to his schedule as they also experience the same issues. Further, Mr. Rivas cannot refuse an assignment during his meal period or rest break. Although Mr. Rivas complained about this situation, the City management expresses anger and dissatisfaction to his complaints. Indeed, Mr. Rivas is a victim of retaliation for his complaints. Because of what they have seen, other drivers do not complain.

More importantly, the City has failed to compensate Mr. Rivas for all of his uninterrupted meal periods and rest breaks.

Mr. Rivas alleges that he is not the only aggrieved employee. Upon information and belief, approximately 20 or more former and current the City employees experienced the same unlawful treatment.

LABOR CODE VIOLATIONS

California Labor Code section 223 prohibits an employer from secretly paying an employee less than the wage scale established by statute or contract. Mr. Rivas and other aggrieved employees' pay rate is established by contract. With regard to Mr. Rivas in particular, he worked approximately 900 hours of uncompensated time, including overtime. These wages were not paid to him at any time.

California Labor Code section 226.7 prohibits an employer from requiring employees to work during a meal or rest period mandated by statute, regulation, standard, or order of the Industrial Welfare Commission. If an employer fails to provide an employee a meal or rest or recovery period, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided. During the relevant time period, Mr. Rivas and other aggrieved employees were routinely forced to miss meal and rest periods, and the City failed to compensate them for doing so.

California Labor Code section 232.5 prohibits an employer from formally disciplining, or otherwise discriminating against an employee who discloses information about the employer's working conditions. the City discharged, formally disciplined, or otherwise discriminated against Mr. Rivas and other aggrieved employees for disclosing information about their working conditions. With regard to Mr. Rivas in particular, the City disciplined, and otherwise discriminated against him for complaining about uninterrupted rest and meal periods, even though compensation was due.

California Labor Code section 432.5 prohibits an employer from requiring an employee to agree in writing to any term or condition of employment known by the employer to be unlawful. The City required Mr. Rivas and other aggrieved employees to agree and work under conditions or terms of employment known by them to be unlawful, to wit, without uninterrupted rest periods and meal breaks.

California Labor Code section 510 requires employers to provide overtime pay to employees whether on a tradition 8-hour day or alternative workweek schedule. The City required Mr. Rivas and other aggrieved employees to work overtime hours by not providing uninterrupted meal periods; they did not receive the proper overtime premiums as required by section 510. With regard to Mr. Rivas in particular, he was deprived of approximately 900 hours of uncompensated time, including overtime. None of those wages have been paid to date.

California Labor Code section 512 prohibits an employer from failing to provide employees with a 30-minute unpaid meal break after 5 hours of work and a second 30-minute unpaid meal break after 10 hours of work, with certain exceptions not applicable

herein. That same section requires an employer to provide a 10-minute paid rest break for every four hours worked or major fraction thereof. During the relevant time period, Mr. Rivas and other aggrieved employees were forced to work in excess of these hours without being provided with the breaks required by this statute. With regard to Mr. Rivas in particular, he often worked through meal or rest periods because he had to pick up passengers immediately when instructed. IWC Wage Order No. 9 specifically provides that "commercial drivers" like Mr. Rivas must be provided a minimum 30-minute meal break after each five hours worked and relieved of all duty during the break

California Labor Code section 558 prohibits employers from violating orders of the Industrial Welfare Commission and prohibits the underpayment of wages to employees. During the relevant time period, the City violated IWC record keeping requirements and underpaid wages due to Mr. Rivas and other aggrieved employees. With regard to Mr. Rivas in particular, he was deprived of approximately 900 hours of uncompensated time, including overtime. None of those wages have been paid to date.

California Labor Code section 1102.5 prohibits an employer from retaliating against an employee for refusing to participate in an activity that would result in a violation of a state or federal statute, rule, or regulation or for reporting (internally or externally) what they reasonably believe to be unlawful conduct by the employer. During the relevant time period, the City retaliated against Mr. Rivas and other aggrieved employees for refusing to participate in such illegal activities and refusing to be compensated in a manner that violates the Labor Code sections mentioned herein, as well as for complaining internally regarding the illegal activities and unsafe conditions. With regard to Mr. Rivas in particular, he complained that he was unable to take rest and meal periods and was reprimanded.

California Labor Code section 1174(d) requires employers to keep records at their establishment showing the hours worked daily by, and the wages paid to, employees for a period of not less than three years. During the relevant time period, the City failed to maintain records in compliance with this section. The City's noncompliance with California record keeping requirements has injured Mr. Rivas and/or other aggrieved employees. With regard to Mr. Rivas in particular, the City failed to maintain records of his overtime hours worked and the compensation due.

California Labor Code section 1194 prohibits an employer from paying wages that are less than the legally required minimum wage and overtime compensation, regardless of whether or not the employee agreed to work for a lesser amount. During the relevant time period, the City failed to pay Mr. Rivas and other aggrieved employees the overtime due and owing to them under the law. With regard to Mr. Rivas in particular, he was deprived of approximately 900 hours of uncompensated time, including overtime. None of those wages have been paid to date.

California Labor Code section 1198 requires employers to comply with the hours and working conditions restrictions imposed by the Industrial Welfare Commission Wage Orders. The City failed to comply with the applicable Wage Order restrictions on hours, overtime compensation, meal, and rest breaks, and working conditions with regard to

Mr. Rivas and other aggrieved employees. With regard to Mr. Rivas in particular, the City failed to pay overtime compensation that was due and owing to him and also failed to provide him with the meal and rest breaks required by the applicable Wage Order.

California Labor Code section 1199 makes it unlawful for an employer to require or cause an employee to work for longer hours than or under conditions prohibited by an applicable Wage Order. the City required or caused employees, including Mr. Rivas and other aggrieved employees, to work longer hours or under conditions prohibited by the applicable Wage Orders and failed to pay them in accordance with those Wage Orders.

Therefore, on behalf of all current and former aggrieved employees, Mr. Rivas seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA. See, *Johnson v. Arvin-Edison Water Storage Dist.* (2009) 174 Cal.App.4th 729, 737; *Miles v. City of Los Angeles* (2020) 56 Cal.App.5th 728, 736; *Sargent v. Bd. of Trs. of the Cal. State Univ.* (2021) 61 CA5th 658, 667.

If you have any questions or require any additional information, please do not hesitate to contact us. Thank for your attention to this matter.

Sincerely,



PATRICIO BARRERA
Attorney for Ulysses Rivas

cc: Via Electronic and Certified Mail

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